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WONG YENG MUN

v.

CIMB BANK BHD

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HIGH COURT MALAYA, KUALA LUMPUR
BALIA YUSOF WAHI J
[CIVIL SUIT NO: S1-22-1002-2007]
14 JANUARY 2010

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BANKING: *Banks and banking business - Confidentiality obligations - Bank sending statement of accounts to customer's home address instead of stipulated correspondence address - Statement of accounts viewed by unauthorized party - Whether bank breached confidentiality of plaintiff's account*

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The plaintiff had opened an account with the defendant bank, namely a current account, a savings account and a fixed deposit account jointly in his name and in the name of his son, one Gilbert Wong U Bing ('direct access account'). The plaintiff had given his correspondence address as Jalan Bengkudu in Kepong Baru. Plaintiff had been receiving the monthly statement of accounts at the said address. On 17 March 2007, without the consent of the plaintiff, the defendant sent the statement of accounts of the plaintiff to an address in Bukit Seputeh. As a result of that, the plaintiff's wife came to know about the said accounts and this had created problems between them. Since then, the plaintiff had suffered anxiety, trauma, depression, financial loss and health problems. The plaintiff claimed he now had to share the amount of his savings in those accounts with his wife. The plaintiff alleged a breach of duty on the part of the defendant in failing to keep the confidentiality of his accounts and transactions with the defendant and was claiming for general and exemplary damages, special damages in the sum of RM317,797.14. According to the defendant, there was nothing in the contract between the plaintiff and the defendant prohibiting the defendant from sending the bank statement to the home address and it was also never agreed between the parties that the defendant could only send it to the correspondence address. The issue that arose was whether there was a breach of confidentiality as alleged by the plaintiff.

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Held (allowing plaintiff's claim):

(1) On the totality of the evidence adduced, there had been a breach of confidentiality by the defendant. PW1's evidence remained unchallenged in most parts and his evidence as regard the correspondence address for the direct access account was never challenged. He never informed the defendant of any change of address and neither did he authorize the defendant to use any other address. In fact, for the direct access account, only one correspondence address was given to the defendant. From the evidence adduced, it was clear that the defendant had obtained the plaintiff's home address in Bukit Seputeh from the plaintiff's application for a credit card or through the wife's application for a credit card. The evidence also showed that all along, from 1997 until as late as March 2007, the plaintiff's statement for the direct access accounts had always been sent to the correspondence address in Kepong Baru. (paras 7 & 8)

(2) The defendant's letter in exh. P9 was an explanation by the bank which admitted the slip up. DW2 who was the team manager for the Direct Access Call Center, admitted in his evidence that after the merger exercise in the bank, the defendant started giving separate statements of account to joint account holders and at different addresses. This was an act of the defendant's own volition and not the plaintiff's. The plaintiff never authorised the defendant to do so. The decision to send separate statements to joint account holders was made by the merger committee and the plaintiff was never informed of this change. DW2 further admitted during cross examination that it was a mistake to send the statement of account to the plaintiff's address in Bukit Seputeh. (para 8)

(3) It is implied in a contract between a banker and his customer that the banker will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transaction with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by a court, or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it (*Tournier v. National Provincial and Union Bank of England*). (para 10)

A **(4)** The defendant had breached the confidentiality of the plaintiff's account. The defendant was liable and the plaintiff's claim was hereby allowed. On the issue of damages, both general and special, parties will appear before the Timbalan Pendaftar for assessment of damages. As to the plaintiff's claim for exemplary
B and aggravated damages, on the facts and circumstances of the case, there was insufficient reason to accede to the plaintiff's claim. The award of exemplary damages is limited to certain categories of cases among which involve cases of arbitrariness, oppressiveness or unconstitutional conduct or action by the
C servants of the government. The defendant's action in the circumstances of this case was not deliberate and intentional or carried out with a cynical disregard of the plaintiff's right. The plaintiff's claim for exemplary damages was disallowed. (paras 11 & 12)

D *[Order accordingly.]*

Case(s) referred to:

Foong Chee Chong v. Inspector Mohd Nasir Shamsuddin & Anor [1998] 4 CLJ 309 HC ***(refd)***

E *Laksmana Realty Sdn Bhd v. Goh Eng Hwa [2005] 4 CLJ 871 CA* ***(refd)***

Rookes v. Barnard [1964] AC 1129 ***(refd)***

Tournier v. National Provincial and Union Bank of England [1923] 1 KB 461 ***(refd)***

Yip Shou Shan v. Sin Heap Lee - Marubeni Sdn Bhd [2002] 5 CLJ 574 HC
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For the plaintiff - Rathimalar; M/s Rathi MG Assocs
For the defendant - Arham Rahimy Hariri; M/s Azim Tunku Farik & Wong

Reported by Suhainah Wahiduddin

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JUDGMENT

Balia Yusof Wahi J:

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Facts

[1] Sometime in April 1997, the plaintiff opened an account with the defendant bank namely a current account, a savings account and a fixed deposit account jointly in his name and in the name of his
I son Gilbert Wong U Bing (hereinafter referred to as direct access account). The plaintiff gave his correspondence address as No. 51

Jalan Bengkudu (Jalan 42) Kepong Baru, 52100 Kuala Lumpur. Ever since the opening of the same, the plaintiff has been receiving his monthly statement of accounts at the said address. A

[2] On 17 March 2007, without the consent of the plaintiff, the defendant sent the statement of accounts of the plaintiff to No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000, Kuala Lumpur. On 17 April 2007 the defendant again sent the same to the said address and again without the plaintiff's consent. As a result of that, the plaintiff's wife come to know about the said accounts and this has created problem between them. Since then, the plaintiff has suffered anxiety, trauma, depression, miseries, financial loss and health problems. The plaintiff claims he has now to share the amount of his savings in those accounts with his wife. The plaintiff is alleging a breach of duty on the part of the defendant in failing to keep the confidentiality of his accounts and transactions with the defendant and is claiming for general and exemplary damages, special damages in the sum of RM317,797.14, interest and costs. B C D

The Plaintiff's Evidence

[3] In his evidence, the plaintiff stated that he opened the direct access accounts with the defendant in a joint name with his son from a previous marriage. He dealt with one Mr. Khairul. He gave his correspondence address as No. 51 Jalan Bengkudu (Jalan 42) Kepong Baru, 52100 Kuala Lumpur to keep it confidential and out of the knowledge of everybody including his wife. This is because the monies in the said three direct access accounts are for the benefit of his said son. Exhibits P4 and P5 are statement of accounts for the said three direct access accounts sent to the correspondence address of no. 51 Jalan Bengkudu (Jalan (42) Kepong Baru, 52100 Kuala Lumpur dated 17 May 1997 and 16 March 2007. The express terms and conditions of the agreement between the parties are spelt out in exh. P6. E F G

[4] The plaintiff further testified that by a statement dated 17 March 2007 and 17 April 2007 (exh. P7) the defendant has sent them to No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000, Kuala Lumpur and was received by his wife. Upon knowing the existence of these accounts, his wife has caused stressed and miseries to him because of the secrecy of the said accounts and she has demanded 50% of the total balance to be given to her. The plaintiff testified that he has been keeping the accounts as a secret. The plaintiff H I

A then wrote exh. P8 to the defendant complaining about the matter and exh. P9 is the letter of the defendant apologizing to the plaintiff for the inconvenience caused and enclosing a gift along with the letter. In a further letter to the defendant marked as exh. P10, the plaintiff stated that his wife has applied for a credit B card from the defendant and has given his name as her husband and has given her address as No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000 Kuala Lumpur. The plaintiff further states in the said letter that he also has accounts with other banks including with the defendant in joint name with his wife. The statements to C these accounts are sent to the No. 51 Jalan Teluk Pulai, Bukit Seputih, 58000 Kuala Lumpur address with only his name appearing on the cover and it is his wife who goes through these statements and does the filing. It is for this reason that she opens the cover/ envelope enclosing the statement of account. The plaintiff further D testified that he has also applied for a credit card with the defendant and has given his correspondence address as 19-2nd Floor Jalan 1/57A, Batu 3 Jalan Ipoh, 51200 Kuala Lumpur. He also gave his home address as No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000 Kuala Lumpur (exh. P11, P12 & P13). The plaintiff E maintains that he had never at any time inform the defendant about any change of address for the direct access accounts.

The Defence

F **[5]** DW1, the Assistant Manager, Corporate Administration & Administration Services of the defendant gave evidence and stated that he is in charge among others on matters pertaining to the sending of notice and monthly statements of account to the bank's customers. He stated in 2007 monthly statements of account are G normally sent by ordinary post in sealed envelopes marked "Private & Confidential" and he believes the plaintiff's statements of account were also sent in the same manner. A sample of such envelope was produced and tendered as exh. D14.

[6] DW2 who was the team manager for direct access call centre H in 2007 testified that he attended to the plaintiff's complaint and stated that there is nothing in the contract between the plaintiff and the defendant prohibiting the defendant from sending the bank statement to the home address and it was also never agreed between the parties that the defendant can only send it to the I correspondence address. DW2 further explain that the situation occurred because of the merger exercise carried out by the bank

which results in the bank sending separate statements of account to parties holding joint accounts. The defendant sent one set to Gilbert Wong U Bing at the No. 51 Jalan Bengkulu (Jalan 42), 51200 Kepong Baru, Kuala Lumpur address and another set to No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000, Kuala Lumpur in the plaintiff's name. DW2 further testified that the defendant never knew about the relationship between the plaintiff and Gilbert Wong U Bing and whatever understanding the plaintiff has with his wife.

Findings Of The Court

[7] The issue in this case is simply whether there was a breach of confidentiality as alleged by the plaintiff.

[8] On the totality of the evidence adduced, I am satisfied that there has been a breach of confidentiality by the defendant. PW1 evidence remains unchallenged in most parts and his evidence as regard the correspondence address for the direct access account is never challenged. He never inform the defendant of any change of address and neither does he authorize the defendant to use any other address. In fact for the direct access account only one correspondence address was given to the defendant. DW2 is not in position to say otherwise as he was not the person in charge of the opening of the direct access account by the plaintiff. It was one Mr. Khairul. From the evidence adduced, it is clear that the defendant obtained the plaintiff's home address of No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000 Kuala Lumpur from the plaintiff's application for a credit card made in 2002 or through the wife's application for a credit card. The evidence also shows that all along, from 1997 until as late as March 2007, the plaintiff's statement for the direct access accounts has always been sent to the correspondence address given ie, No. 51 Jalan Bengkudu (Jalan 42) Kepong Baru, 52100 Kuala Lumpur. The defendant's letter in exh. P9 is an explanation by the bank which admits the slip up. This was further reiterated by DW2 in his evidence. DW2 admitted in his evidence that after the merger exercise in the bank, the defendant started giving separate statements of account to joint account holders and at different addresses. This was an act of the defendant's own volition and not the plaintiff's. The plaintiff never authorized the defendant to do so. The decision to send separate statements to joint account holders was made by the merger committee and the plaintiff was never informed of this change. DW2 further admitted during cross

examination that it was a mistake to send the statement of account to the plaintiff's address at No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000 Kuala Lumpur.

[9] I also accept the plaintiff's evidence and explanation as to how the envelope containing the plaintiff's direct access statement of account was opened by his wife. He also has other bank accounts in joint name with his wife sent to the home address at Bukit Seputeh in his name and it is the wife who goes through the statements and do the filing. In the circumstances of the case, it makes no difference that the envelope was marked "Private and Confidential". In any event, the evidence of DW1 does not state for sure that the particular statements of account which belongs to the plaintiff was marked as such. DW1 merely states that normally statements are sent by ordinary post in envelope marked "Private and Confidential". The envelope marked D14 is only a sample and not the one actually sent to the plaintiff's home address at No. 51 Jalan Teluk Pulai, Bukit Seputeh, 58000 Kuala Lumpur.

[10] While it is true that there is nothing expressly stated in the agreement between the parties (exh. P6), it is implied in a contract between a banker and his customer that the banker will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transaction with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by a court, or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it. (See: *Tournier v. National Provincial and Union Bank of England* [1923] 1 KB 461).

[11] In conclusion, I find that the defendant has breached the confidentiality of the plaintiff's account. Since the case is only heard on the issue of liability as directed by the Timbalan Pendaftar during case management. I find the defendant to be liable. The plaintiff's claim in hereby allowed. On the issue of damages, both general and special, parties will appear before the Timbalan Pendaftar for assessment of damages. I further order that interest at 8% per annum be allowed on the damages and costs be awarded to the plaintiff.

[12] As to the plaintiff's claim for exemplary and aggravated damages, on the facts and circumstances of the case I find insufficient reason to accede to the plaintiff's claim. The award of exemplary damages are limited to certain categories of cases among which involve cases of arbitrariness, oppressiveness or unconstitutional conduct or action by the servants of the government. The defendant's action in the circumstances of this case was not deliberate and intentional and carried out with a cynical disregard of the plaintiff's right (See: *Yip Shou Shan v. Sin Heap Lee - Marubeni Sdn Bhd* [2002] 5 CLJ 574, *Foong Chee Chong v. Inspector Mohd Nasir Shamsuddin & Anor* [1998] 4 CLJ 309, *Laksmana Realty Sdn Bhd v. Goh Eng Hwa* [2005] 4 CLJ 871, *Rookes v. Barnard* [1964] AC 1129). Based on these established principles, the plaintiff's claim for exemplary damages is disallowed.